



## APPEARANCES

## FOR THE GOVERNMENT:

Carlo D. Marchioli, Assistant U.S. Attorney  
United States Attorney's Office  
228 Walnut Street, Second Floor  
Harrisburg, PA 17101

Phillip J. Caraballo-Garrison, Assistant U.S. Attorney  
United States Attorney's Office  
235 North Washington Avenue, Suite 311  
Scranton, PA 18503

James I. Pearce, Trial Attorney  
United States Department of Justice  
Public Integrity Section, Criminal Division  
1331 F. Street N.W., Third Floor  
Washington, D.C. 20004

## FOR THE DEFENDANT:

John A. Abom, Esquire  
Abom & Kutulakis  
2 West High Street  
Carlisle, PA 17013

1       *(The following proceedings were held in the courtroom in*  
2 *the absence of the jury:)*

3           *THE COURT:* Good morning, everyone. Please be seated.  
4 We are now in session for the case of *United States v. Collare*  
5 docketed at this court's Number 1:20-CR-17. There are a few  
6 matters I wanted to place on the record before we begin jury  
7 selection.

8           The first is to note for the record that I did hold a  
9 pretrial conference with counsel that was off the record. We  
10 held that on June 30. There was only one matter from my notes  
11 that I thought it appropriate to place on the record, which was  
12 that the defense did request witness sequestration, which  
13 request was not opposed by the government, and so all fact  
14 witnesses other than the case agents will be sequestered until  
15 their testimony is concluded.

16           The other matter that we need to address this morning  
17 is to provide the *Brady* notice to Mr. Collare because this is  
18 the first opportunity to do so. And then after I provide the  
19 *Brady* notice, I'll give counsel an opportunity, if there's  
20 anything that you would like to place on the record before jury  
21 selection or any questions that you may have about jury  
22 selection, I'll be happy to address those in just a moment.

23           So, Mr. Collare, I note that Federal Rule of Criminal  
24 Procedure 5 was amended on October 21st of 2020 to require  
25 courts to give both oral and written notice of the government's

1 *Brady* disclosure obligations on the first scheduled court date  
2 when both the prosecutor and defense counsel are present. In  
3 this case, the first opportunity for the required oral notice  
4 is today, so I am providing that notice to you now.

5 I hereby issue an order confirming that the United  
6 States has an obligation to timely disclose *Brady* information  
7 to the defendant. I remind government counsel that failure to  
8 comply with these disclosure obligations may result in  
9 consequences, such as the exclusion of evidence, dismissal of  
10 charges, contempt proceedings, disciplinary referral, and any  
11 other relief authorized by law. I will enter a written order  
12 further confirming these obligations.

13 To be clear, this amendment does not alter or expand  
14 the government's existing obligations. It simply requires the  
15 court to provide oral and written notice of those obligations  
16 to the defendant. Any questions?

17 *THE DEFENDANT:* No, Your Honor.

18 *THE COURT:* All right. Very well. Then the only  
19 other matter I wanted to address was whether there were any  
20 issues arising from the pretrial conference or otherwise that  
21 either counsel wish to place on the record. I'll begin with  
22 the government. Anything on behalf of the government?

23 *MR. MARCHIOLI:* Not from the pretrial conference, Your  
24 Honor, but I did want to alert the court to two things. First,  
25 as the court is probably aware or can at least expect, a number

1 of our witnesses have battled drug addiction throughout their  
2 lives, and some are continuing to battle drug addiction. So  
3 we, and primarily the FBI, have arranged for multiple agents  
4 beyond the case agents to assist those witnesses in getting to  
5 court.

6 And to the extent that our plans kind of don't go  
7 according to plan, we hope to have some backup witnesses, but  
8 if we do change things or change the witness order that we give  
9 to the court at the end of the day or run into any witness  
10 difficulties, it might be due to those issues that some of our  
11 witnesses are confronting, so we just wanted to inform the  
12 court of that at the start of trial.

13 *THE COURT:* Appreciate it.

14 *MR. MARCHIOLI:* The second issue, Your Honor, is that  
15 the parties have reached multiple stipulations, one of which  
16 will cover the admission of a large swath of the government's  
17 anticipated exhibits.

18 We'd like to put that particular stipulation on the  
19 record prior to our first witness and then move for the  
20 admission of the exhibits covered by that stipulation. And  
21 we'd defer to the court about the best time to do that, whether  
22 it's when the jury is present or outside of the jury's  
23 presence, but we would like to do that before our first  
24 witness.

25 *THE COURT:* All right. Well, that is wonderful that

1 you've reached that agreement. I think we -- how have you  
2 confirmed the agreement with respect to the exhibit list? Is  
3 it in writing, or would you prefer to simply recite that on the  
4 record?

5 *MR. MARCHIOLI:* It is in writing. We had planned to  
6 also read it on the record, but if Your Honor has a different  
7 preference, we can do that, obviously.

8 *THE COURT:* I'm open to suggestions. I think as long  
9 as -- what I would prefer to do is put on the record the  
10 agreement that's been reached outside the hearing of the jury  
11 because that can be a bit tedious. I'd be happy to advise the  
12 jury that if they are shown an exhibit and if I indicate it's  
13 been admitted, then it is in evidence. So I can advise them of  
14 that without necessarily reading the list to them.

15 So we could do that now, if you'd like. We could do  
16 the stipulation portion, and I can admit the exhibits. That  
17 way, as we discussed during the pretrial conference, when you  
18 have a witness on the stand, it's pretty seamless. You simply  
19 remind me -- or you call the number. I will confirm because I  
20 keep track, Ms. Edleblute keeps track, I know you keep track,  
21 my law clerk keeps track.

22 If there's any hesitation about whether an exhibit has  
23 been admitted, we'll clear that up and it won't be shown to the  
24 jury until I've done my confirming step that it's admitted.

25 *MR. MARCHIOLI:* Okay.

1           *THE COURT:* So we could do that now. You have it in  
2 writing, so if you want to -- actually, if you want to just  
3 tender that, we can mark that as an exhibit to the case, though  
4 not an exhibit necessarily to be shown to the jury, unless you  
5 want it to be shown to the jury.

6           *MR. MARCHIOLI:* We don't intend to show it to the  
7 jury, Your Honor. Should I go ahead and read it first or just  
8 offer it as an exhibit?

9           *THE COURT:* Why don't you read it, and then we'll make  
10 it an exhibit to the record, and then I will keep track as you  
11 read the numbers.

12           *MR. MARCHIOLI:* Okay. The following stipulation is  
13 entered by the United States and Defendant Christopher Collare  
14 through their respective undersigned counsel:

15           It is hereby stipulated and agreed that the exhibits  
16 listed below are business records of the respective listed  
17 entities. The records were made at or near the time of the  
18 activity they reflect by or from information transmitted by  
19 someone with knowledge.

20           The records were kept in the course of the regularly  
21 conducted activity of the respective listed entities. Making  
22 the records was a regular practice of that activity. The chain  
23 of custody of the exhibits listed below has been properly  
24 maintained.

25           The parties also stipulate and agree to the

1 authenticity of the exhibits listed below. The parties further  
2 stipulate and agree to the admission of the exhibits listed  
3 below.

4 This stipulation applies to the following exhibits:  
5 Federal Bureau of Investigation records, Government's Exhibits  
6 3 through 7. Cumberland County, Government's Exhibit 8.  
7 Borough of Carlisle, Government's Exhibits 9, 50.1, 51.11, 52  
8 through 56 --

9 *THE COURT:* Slow down one moment, Mr. Marchioli. I'm  
10 sorry, I was with you up until -- I have 50.1, and then what  
11 was the next one?

12 *MR. MARCHIOLI:* 51.11.

13 *THE COURT:* Okay.

14 *MR. MARCHIOLI:* 52 through 56, 57.1, and 58.  
15 Cumberland County Drug Task Force, Government's Exhibits 12,  
16 20.1 through 22.2, 23.1 and 23.2, 24.1 through 28.2, 29.1 and  
17 29.2, 30.1 through 30.2, and 70 through 72.

18 The Law Offices of Paul Orr, Government's Exhibit  
19 29.3. Cumberland County Court of Common Pleas, Government's  
20 Exhibits 50.2 through 50.12, 51.1 through 51.10, 51.14 to  
21 51.16, 59.1 through 59.5. Cumberland County District  
22 Attorney's Office, Government's Exhibits 50.13, 51.12, and 57.

23 *THE COURT:* Did you say 51.3?

24 *MR. MARCHIOLI:* It was 50.13.

25 *THE COURT:* Okay. And then, I'm sorry, what was the



1 second?

2 *MR. MARCHIOLI:* 51.12.

3 *THE COURT:* Okay.

4 *MR. MARCHIOLI:* And then 57.

5 *THE COURT:* Thank you.

6 *MR. MARCHIOLI:* Department of Justice, Office of  
7 Inspector General, Government's Exhibit 11. Pennsylvania State  
8 Police, Government's Exhibit 22.3. Motel 6, Government's  
9 Exhibits 80 and 81. America's Best Value Inn, Government's  
10 Exhibit 82.

11 The chain of custody of the following exhibits has  
12 been properly maintained. The parties also stipulate and agree  
13 to the authenticity of the following exhibits. And just as an  
14 aside, Your Honor, these exhibits we have not agreed at this  
15 point that they will be admitted.

16 *THE COURT:* Okay.

17 *MR. MARCHIOLI:* We're just stipulating to authenticity  
18 and chain of custody. And that applies to Government's  
19 Exhibits 1, 2, 28.3, 50.14, 51.13, and 150 through 171.

20 And, finally, the parties further stipulate and agree  
21 to the admission of the following exhibits: 1, 28.3, 50.14,  
22 51.13, 150 to 160, and 161 to 171.

23 *THE COURT:* I'm sorry, what was that last range?

24 *MR. MARCHIOLI:* 161 to 171.

25 *THE COURT:* Thank you. All right. Is that --

1           MR. MARCHIOLI: That's everything from the government,  
2 Your Honor.

3           THE COURT: All right. And so I assume Mr. Abom  
4 already has a copy of the stipulation?

5           MR. MARCHIOLI: We need to make a copy of the signed  
6 version, Your Honor.

7           THE COURT: Okay. Ms. Edleblute, would you mind, or  
8 Mr. Thomas, could one of you, after it's marked with an exhibit  
9 sticker, you'll retain the original, and then we can make a  
10 couple of copies, maybe three.

11          MR. MARCHIOLI: Should I provide a copy?

12          THE COURT: Yeah, we'll go and make some copies so  
13 that we all have the same and then the original will remain for  
14 docketing with Ms. Edleblute. We'll make that Government  
15 Exhibit -- why don't we make it Government Exhibit 300. I will  
16 admit the stipulation with respect to exhibits as Government  
17 Exhibit 300. We will make that part of the record of this  
18 trial.

19               I will now admit into evidence, pursuant to the  
20 parties' stipulation, the exhibits indicated by Mr. Marchioli  
21 and as agreed to by counsel only with -- and the court is  
22 mindful of the fact that there was a small set of exhibits that  
23 there was a stipulation to authenticity and chain of custody,  
24 but not admissibility, and so I have not reflected that in my  
25 record as those exhibits being admitted but merely that they

1 are subject to a stipulation.

2 And so as I indicated earlier, when the jury is  
3 empaneled and these exhibits become -- are being discussed, you  
4 can simply indicate, Your Honor, I would ask to show the  
5 witness Exhibit Number 1 which was previously admitted into  
6 evidence, may it be displayed, I'll confirm from my notes that  
7 it's admitted, and then it will be displayed.

8 All right. Are there any other stipulations? I know  
9 there was some discussion of potential fact stipulations.

10 MR. MARCHIOLI: There are two additional stipulations,  
11 Your Honor. With respect to those, we would propose to read  
12 those during the trial.

13 So, for instance, a stipulation about a heroin  
14 analysis and a stipulation related to the federal program  
15 bribery charge and specifically that the two municipalities at  
16 issue received over \$10,000 under a federal program and a  
17 stipulation related to a fine applicable to one of the drug  
18 offenses that's listed in the indictment.

19 THE COURT: Okay.

20 MR. MARCHIOLI: We would propose to read those at an  
21 appropriate point during the trial.

22 THE COURT: All right. Very well. Thank you. Are  
23 there any other preliminary matters for the government?

24 MR. MARCHIOLI: No, Your Honor.

25 THE COURT: For the defense?

1           MR. ABOM: No, Your Honor.

2           THE COURT: All right. Well, then what we'll do is,  
3 Ms. Edleblute, when she finishes taking care of that document,  
4 we'll check in with our jury clerk and check on the status of  
5 things. I'll be available.

6           So as soon as we get the word that the chart, jury  
7 list, and questionnaires are available, Ms. Edleblute will get  
8 those distributed to you, and then we'll keep you posted on the  
9 status of when we can bring the jury into the room.

10           Hopefully it will be close to 9:30, but we do have a  
11 significant number of jurors for Ms. Campbell to process in.  
12 So we'll keep you posted, and I'll be available. Court will  
13 stand in recess.

14           *(Recess taken.)*

15           *(Prospective jurors enter courtroom at 10:41 a.m.)*

16           THE COURT: Good morning, everyone. Please be seated.  
17 I am Judge Jennifer Wilson, and I am the trial judge for the  
18 case you've been called in for this morning. You have been  
19 called today as prospective jurors for the case of *United*  
20 *States v. Christopher Collare*. This is a criminal case.

21           Seated in front of me are members of my staff. To my  
22 left is our court reporter who will be making a record of  
23 everything said in the courtroom, which is called a transcript.  
24 Seated next to the court reporter is my courtroom deputy for  
25 this case, whom you've already met. Her name is Victoria

1 Edleblute. And then to my right is my law clerk, Liam Thomas,  
2 who will be assisting me during this trial.

3 I join everyone in this room in thanking you for your  
4 service as jurors already today. I understand you've already  
5 watched a video called, *Called to Serve*, which explains the  
6 importance of jury selection and the importance of your  
7 service, and I promise you I will do my best not to repeat the  
8 points already made in that video as we move ahead with the  
9 selection of jurors who will decide this case.

10 In a few moments, I will begin asking you questions to  
11 assess your qualifications to sit as jurors for this particular  
12 case. You are about to take an oath to answer my questions  
13 truthfully. This process throughout this morning is called  
14 voir dire. So I'll now ask all prospective jurors to please  
15 stand so that Ms. Edleblute can administer an oath.

16 *COURTROOM DEPUTY:* Please raise your right hand.

17 *(Prospective jurors sworn.)*

18 *COURTROOM DEPUTY:* Thank you.

19 *THE COURT:* Thank you. Please be seated. The voir  
20 dire examination will begin with a brief statement about the  
21 particulars of the case. The purpose of providing this  
22 statement is to tell you about the case generally and to  
23 identify the parties and their lawyers.

24 Questions will then be asked to find out whether you  
25 have any personal knowledge of or interest in this case, as

1 well as to determine whether there is any reason why you are  
2 not able to render a fair and impartial verdict. Please accept  
3 this questioning process in the spirit of its objective, which  
4 is to select a fair and impartial jury.

5 Now, before you came into court this morning, you were  
6 asked to fill out a questionnaire in an effort to streamline  
7 the jury selection process. The attorneys and I each have a  
8 copy of your completed questionnaires, and we will refer to  
9 those instead of making you repeat all of the answers.

10 In addition, you have each been assigned a juror  
11 number in an effort to protect your privacy. I will refer to  
12 you by your juror number throughout this selection process, and  
13 I will also ask you, if you have an answer to a question, to  
14 identify yourself by your juror number.

15 If you have a response to a question that I ask or  
16 that one of the attorneys asks, you will let me know that you  
17 have a response by raising your hand. When it's your turn to  
18 respond, please stand, state your juror number, and then  
19 provide your answer.

20 I know that some folks are more soft-spoken than  
21 others, so if you have any difficulty projecting your voice so  
22 that we can all hear you and so that we can capture your answer  
23 for the record, we do have a microphone we can hand out, but it  
24 may be easier if you just, at least initially, attempt to keep  
25 your voice up.

1           In addition, some of you are masked, which is  
2 perfectly fine. That's at your discretion according to the  
3 masking policy in our courthouse. I just ask, it may be  
4 easier, if you have a response, to lower your mask, at least  
5 for the purpose of answering a question. All right?

6           And to that end, there is signage throughout the  
7 courthouse, we're following the CDC policy. I won't be asking  
8 any of you if you're vaccinated. The signage speaks for  
9 itself. If you are vaccinated, you're not obligated to wear a  
10 mask, though you're free to do so. If you're not vaccinated,  
11 per the CDC, we ask that you continue to be masked.

12           Now, if I ask a question that you would prefer not to  
13 answer in the hearing of everyone else in the courtroom,  
14 meaning the other prospective jurors, you should ask to speak  
15 to me up front. This is called a sidebar conference. The  
16 attorneys will be able to listen, and it will be on the record,  
17 but I can offer you this option if you'd like a little more  
18 privacy for your response.

19           Anytime there is a sidebar conference, we will turn on  
20 white noise, and we use a special set of headphones up front so  
21 that those of us who are intended to hear can hear. I do this  
22 so that I can have a private conversation up here at the bench.  
23 It is intended, just to be clear, that all of you who are  
24 prospective jurors will not hear this conversation. If you are  
25 able to hear, I would just ask if you could let me know that by

1 raising your hand so that we can make adjustments to the sound,  
2 if needed.

3 If you do come forward for a sidebar conference, we  
4 will provide you with a special set of headphones that plugs  
5 into the system, and I would just ask if you can keep those  
6 throughout jury selection. You can dispose of them at the end.  
7 But that way we can just give each person who needs one one set  
8 of headphones.

9 Now, after I conclude the questioning, I will ask all  
10 prospective jurors to remain seated while I confer with counsel  
11 up here at the bench for what's called a sidebar conference, as  
12 you already know.

13 After I finish conferring with counsel about which  
14 prospective jurors should be removed for cause and after  
15 counsel has an opportunity to exercise their peremptory  
16 challenges, I will then identify the jurors who will be  
17 empaneled for this case.

18 This process will take some time, but we'll move as  
19 quickly as possible. I simply ask for your patience, your  
20 attention, and your honesty, as this is a matter of great  
21 importance to the parties and their counsel, as well as to this  
22 court. Now I'll turn to the questioning.

23 *(Whereupon, voir dire was conducted, and a jury of twelve*  
24 *and two alternates was empaneled.)*

25 *THE COURT:* Mr. Marchioli, are you satisfied with the



1 jury?

2 MR. MARCHIOLI: Yes, Your Honor.

3 THE COURT: Mr. Abom, are you satisfied with the jury?

4 MR. ABOM: Yes, Your Honor.

5 THE COURT: All right. Thank you, gentlemen. Remain  
6 standing. Ms. Edleblute will now administer an oath.

7 COURTROOM DEPUTY: Please raise your right hand.

8 (Jury sworn.)

9 COURTROOM DEPUTY: Thank you.

10 THE COURT: All right. Empaneled jurors, please be  
11 seated. We are going to let you go to lunch, and I want to  
12 just sort of explain how we're going to process out of the  
13 courtroom at this time.

14 So, first of all, all of you who have not now been  
15 empaneled and taken an oath, you are being excused with our  
16 tremendous appreciation. I know it's been a long morning. I  
17 appreciate everyone's patience and candor. You've been an  
18 extraordinarily interactive group and I think just a really  
19 great selection process, although I know a long one, and you're  
20 probably all hungry and eager to get out of this room.

21 So I won't belabor the point, but please know that  
22 even though -- for those of you who have not been empaneled,  
23 you're not being selected to serve as jurors, but your service  
24 is, nonetheless, valuable. It takes a room full of 60 people,  
25 as you can now appreciate, to empanel a jury of 14, and we

1 really appreciate your time, and I think I speak on behalf of  
2 the lawyers and the parties in saying that. So your service is  
3 greatly appreciated.

4 The way we will move forward at this juncture is that  
5 Ms. Edleblute, in just a moment, will open the doors and invite  
6 all of you to process out of the courtroom. Those of you who  
7 have been excused, you are free to go. Do they need to go to  
8 the seventh floor to check in with Marlene?

9 *COURTROOM DEPUTY:* Not unless there's something that  
10 they need from her.

11 *THE COURT:* Okay. If you have no reason to speak with  
12 Ms. Campbell, the jury clerk, you're free to just directly  
13 leave. You don't need to return to the seventh floor.

14 For the 14 of you who are now empaneled jurors, I'm  
15 going to excuse you for lunch, but before you leave,  
16 Ms. Edleblute is going to show you to your new home for the  
17 next couple weeks, your jury deliberation room. So she's going  
18 to escort you back to the jury deliberation room so you know  
19 where it is, and then you're excused for lunch.

20 We will begin the trial at 3 o'clock. So you're free  
21 to go get a bite to eat and then come back to the jury  
22 deliberation room. I would ask that you be back to the jury  
23 deliberation room by no later than 2:45 so that we can start on  
24 time at 3 o'clock.

25 All right. Thank you, everyone, and I will see those

1 of you who are returning at 3 o'clock. Court stands in recess.

2 *COURTROOM DEPUTY:* Please rise.

3 *(Luncheon recess taken.)*

4 *(The following proceedings were held in the courtroom in*  
5 *the absence of the jury:)*

6 *THE COURT:* Just a couple of things. Number one,  
7 regarding the afternoon schedule, so the plan is, I'm bringing  
8 the jury in at 3 o'clock, and I anticipate my preliminary  
9 instructions to take somewhere between 25 to 30 minutes, and  
10 then we would go right into opening statements.

11 Mr. Abom, do you plan to give an opening statement  
12 this afternoon, or are you reserving?

13 *MR. ABOM:* I plan to give an opening statement.

14 *THE COURT:* Okay. And I had allocated 45 minutes per  
15 side. Do you both anticipate using about that amount of time  
16 or --

17 *MR. MARCHIOLI:* I do not, Your Honor. I think it  
18 shouldn't be longer than 25 minutes.

19 *MR. ABOM:* And I do not, as well.

20 *THE COURT:* Okay. So then I think where that will put  
21 us, depending on -- and I'll keep track of time just in case.  
22 It doesn't sound like we'll need the full amount of time. If  
23 you get close to 45 minutes, do either of you want a warning,  
24 or will your respective bench keep track of that for you?

25 *MR. MARCHIOLI:* I'll take a warning, but hopefully I

1 don't get there.

2 MR. ABOM: Yeah, I don't think it's going to be 45  
3 minutes, but if I get to 40 minutes, if you could --

4 THE COURT: Tori will get your attention in some way,  
5 shape, or form.

6 MR. ABOM: Yes.

7 THE COURT: Okay. I think where that's going to put  
8 us then, until we conclude opening statements, will be a  
9 natural break for the day.

10 I did sort of take a look at where our jurors are  
11 traveling from, our empaneled jurors. We have some that are  
12 traveling a fair distance, so I think we should anticipate  
13 sticking to the "no earlier than 9:00" and, if we can avoid it,  
14 "no later than 4:30" schedule to be considerate of their travel  
15 time.

16 One other matter related to our jurors, Juror Number  
17 26, who is now empaneled, let Ms. Edleblute know, and I'm  
18 letting you know, he is a pilot. He will be able to serve, you  
19 know, Monday through Friday, but he, for example, has a flight  
20 scheduled this weekend that will take him out of state.

21 He anticipates being back, if the flights remain as  
22 scheduled, Sunday evening. But he did let us know that there  
23 is always that possibility of a canceled flight. So he's not  
24 asking to be excused, he intends to serve, but that is a  
25 possibility. And, of course, that is why we have alternates.

1 So letting you know that.

2 Also related to our jury, because we went sort of long  
3 on jury selection, through no one's fault -- I thought we  
4 actually moved at a pretty good pace -- my desire to be humane  
5 and get them out of here to be able to get lunch resulted in --  
6 I failed to give them any instruction about not looking at  
7 media and not discussing the case.

8 And I do want to note for the record that the court  
9 observed, over the lunch break, there's an article on PennLive  
10 about jury selection. The jurors have their phones. I just  
11 wanted to put that on the record. It was my failure to  
12 instruct. Normally before we take a recess, I would have  
13 instructed them not to discuss the case with anyone and not to  
14 review any articles or gather any information about the case.

15 Is there any discussion about that? Is there anything  
16 either side would like to place on the record?

17 *MR. MARCHIOLI:* Not for the government, Your Honor.

18 *MR. ABOM:* I don't know if you would want to -- I  
19 leave it to the court to inquire as to whether anybody looked  
20 at any articles. Of course then everybody is going to be very  
21 curious and will go to do that.

22 Maybe you could instruct them not to, but if they had,  
23 to let you know about it. Or if there was -- I don't know what  
24 it said, so I don't know if there's anything in there.

25 *THE COURT:* It was just an article about jury

1 selection. And it does detail the nature of the charges, as  
2 well. I mean, it's a fairly comprehensive article, actually,  
3 describing the case, the nature of the charges, and the jury  
4 selection process.

5 What I would suggest is, so there's no discussion  
6 of -- I don't think in the standard pattern jury instructions  
7 for preliminary matters, I don't think there's any discussion  
8 of, you know, not doing any research, but certainly before we  
9 break for today I'll give them the full instruction on no  
10 discussions, no consumption of news, et cetera, no research.

11 And what I will do is, I will flag for them that if  
12 they have already been exposed to any information about the  
13 case, they should let Ms. Edleblute know, and she'll let me  
14 know. And then I'll pick up with that in the morning, as well,  
15 as a fail-safe. Do you feel that would adequately address the  
16 issue, Mr. Abom?

17 *MR. ABOM:* I do, Your Honor.

18 *THE COURT:* Lastly, we had live-streamed jury  
19 selection to Courtroom 4. That was -- that is turned off at  
20 this point. It remains available as an option if necessary, if  
21 we had any difficulty during the trial with seating or if  
22 anyone was not appropriate to be in the courtroom, but at this  
23 point I'm not planning to live-stream unless that becomes  
24 necessary.

25 Finally, when we conclude today, after I excuse the

1 jury -- and I'll tell them the plan will be to resume trial at  
2 9:00 a.m. on Wednesday. I'll tell them to be here no later  
3 than 8:45. But after I excuse them, I'll ask the government  
4 just to give us a lineup for tomorrow's witness list. All  
5 right? So we'll do that before we part ways.

6 Are there any other preliminary matters for the  
7 government before we bring the jury in?

8 *MR. MARCHIOLI:* No, Your Honor.

9 *THE COURT:* For the defense?

10 *MR. ABOM:* No, Your Honor.

11 *THE COURT:* All right. Very well. So we'll just wait  
12 until 3 o'clock.

13 *MR. MARCHIOLI:* Your Honor, I apologize, there is one  
14 issue we just learned, and we actually don't have complete  
15 information about it.

16 One of the government's witnesses, FBI Special Agent  
17 Eric Rardain, mentioned to us just very briefly as we were  
18 coming up to court that he saw someone who he thinks is one of  
19 the jurors who he recognizes, I think through some type of  
20 youth sports connection.

21 He doesn't think that that juror even knows his last  
22 name, which might be why no one raised their hand to indicate  
23 that they know Eric Rardain. We can try to get more  
24 information. That's all I have at this point. I just wanted  
25 to let the court know and let Mr. Abom know.

1           *THE COURT:* All right. Thank you. Mr. Abom.

2           *MR. ABOM:* Well, if -- I'm hopeful that they don't  
3 know each other. You know, it's --

4           *THE COURT:* I'm sorry, what is the agent's name?

5           *MR. MARCHIOLI:* Eric Rardain.

6           *THE COURT:* Was that on the list? It was such a long  
7 list. Was it on the list?

8           *MR. MARCHIOLI:* It was, Your Honor.

9           *THE COURT:* Okay.

10          *MR. MARCHIOLI:* The spelling is a little bit strange,  
11 but -- so you might have said, like, Eric Rardain or something  
12 like that.

13          *THE COURT:* Okay. Well, I think we need to clear that  
14 up. What I could do is, before we bring the jury in, I could  
15 ask Ms. Edleblute to let them know that I mispronounced a name.  
16 Were there any other names I mispronounced?

17          *MR. MARCHIOLI:* I don't believe so. I think you were  
18 fairly close to what I understand the correct pronunciation to  
19 be.

20          *THE COURT:* Okay. We could simply ask Ms. Edleblute  
21 to let the jurors know that the court inadvertently  
22 mispronounced one of the witness names and the judge wanted to  
23 know if, with the correct pronunciation, if any of you know  
24 this person. That might be a way to -- because as you say, the  
25 juror may not actually connect a name and a face or may not



1 know the last name.

2 *MR. MARCHIOLI:* Right.

3 *THE COURT:* I think that would be appropriate. So  
4 what is the correct pronunciation?

5 *MR. MARCHIOLI:* Eric Rardain.

6 *THE COURT:* All right. She'll ask that question, and  
7 then, Tori, if that creates an issue, if you could just come  
8 back in and then let us know before we bring them in.

9 *COURTROOM DEPUTY:* Yes, of course.

10 *THE COURT:* Thank you.

11 *MR. MARCHIOLI:* Your Honor, I believe there's another  
12 issue related to my opening statement.

13 *THE COURT:* Okay.

14 *MR. MARCHIOLI:* I plan to show a few pictures during  
15 the opening statement which I believe have now been admitted  
16 based on the stipulation this morning. I also plan to show a  
17 particular text message that Mr. Abom has not concurred in its  
18 admission yet, but the government anticipates it will be  
19 admitted during the trial.

20 *MR. ABOM:* And I would object to it being shown to the  
21 jury at the opening statement.

22 *THE COURT:* Just the text message?

23 *MR. ABOM:* Correct.

24 *THE COURT:* Okay. Mr. Marchioli, I'm going to caution  
25 you in the same way that I have prior counsel in other cases

1 when this issue has come up, if you take the risk, so if you  
2 show the jury an exhibit that is ultimately not admitted,  
3 that's a litigation hazard you're assuming.

4 But if you -- I mean, the purpose of an opening  
5 statement is to provide a roadmap for the jury of what you  
6 anticipate the evidence will show, so I'm not going to preclude  
7 you from doing that, but I will give you that caution, that if  
8 it's ultimately not admitted, I suspect the jury will hear from  
9 Mr. Abom about that.

10 *MR. MARCHIOLI:* Understood, Your Honor.

11 *MR. ABOM:* If the court would look at the nature of  
12 the email, that's a bell that can't be unrung. Because if it  
13 doesn't come in -- it's so prejudicial that I don't think that  
14 it would -- that prejudice would be able to be overcome if it  
15 didn't come in.

16 *THE COURT:* Would you like me to look at the exhibit?

17 *MR. ABOM:* I would.

18 *THE COURT:* Okay. Ms. Seto, do you have that  
19 available? How would you propose to admit the exhibit? I  
20 mean, it's clearly hearsay.

21 *MR. MARCHIOLI:* Your Honor, this is a statement of the  
22 defendant, and we anticipate that the individual that the  
23 defendant sent this text message to will testify. Her name is  
24 Amy Keller. She will be able to provide significant  
25 information about getting multiple texts from the defendant's

1 phone.

2           Additionally, Your Honor, the defendant was asked  
3 during his recorded interview about this particular text  
4 message, and I believe at least five lines or so of the text  
5 message were read to the defendant during the interview, and he  
6 indicated, I think without any doubt, that, yes, he had sent  
7 that text message.

8           *THE COURT:* Mr. Abom.

9           *MR. ABOM:* Your Honor, I just think it's very  
10 inflammatory. And while I -- and we haven't conceded that it  
11 would be admitted into the record as of yet and it hasn't been  
12 admitted, so it's not part of our stipulations, and we had many  
13 stipulations. And that witness has not yet testified, and the  
14 witnesses regarding any showing of anything, they have not yet  
15 testified, either.

16           So I would -- I think it can be a roadmap, but  
17 ultimately they're giving the evidence. It's no different than  
18 displaying the evidence before it's been admitted, and the  
19 court has admonished us not to do that.

20           *MR. MARCHIOLI:* I don't believe the court has  
21 admonished us not to do that. I think we're permitted to use  
22 certain exhibits during opening statements. The government  
23 certainly understands that there are risks associated with  
24 doing that.

25           I think I should have stated initially my second

1 point, which is that the defendant was read a portion of this  
2 text message during his recorded interview and acknowledged  
3 sending that text message. That should be enough to get it in.  
4 And like I said, we're also going to have, we plan to have the  
5 witness who received this text message also testify.

6 *THE COURT:* I'm going to stand by my original  
7 position, so he's permitted to show it.

8 All right. Are there any other preliminary issues? I  
9 think Ms. Edleblute was proceeding as we had discussed, but  
10 we'll soon be prepared to bring the jury in. Counsel, are you  
11 both ready?

12 *MR. MARCHIOLI:* Yes, Your Honor.

13 *(Court and courtroom deputy confer.)*

14 *THE COURT:* Counsel, as requested, Ms. Edleblute did  
15 run the name of the officer past the jurors just indicating  
16 he's a witness. She gave it the correct pronunciation, and  
17 there was no concern expressed by our jurors. Everyone ready?

18 *MR. MARCHIOLI:* Yes, Your Honor.

19 *THE COURT:* All right. We'll bring the jury in.

20 *(Jury enters courtroom.)*

21 *THE COURT:* Welcome, jurors. Please be seated,  
22 everyone. Ladies and gentlemen, now that you have been sworn,  
23 I'm going to tell you what your role as jurors in this case  
24 will be.

25 Under our system of justice, the role of the jury is

1 to find the facts of the case based on the evidence presented  
2 at trial. You must decide the facts only from the evidence  
3 presented to you in this trial.

4 From the evidence that you will hear and see in this  
5 room, you will decide what the facts are and then apply to  
6 those facts the law that I will give you in my final  
7 instructions. That is how you will reach your verdict.

8 Whatever your verdict, it will have to be unanimous.  
9 All of you will have to agree on it or there will be no  
10 verdict. In the jury room, you will discuss the case among  
11 yourselves, but ultimately each of you will have to make up his  
12 or her own mind. Therefore, each of you has a responsibility  
13 which you cannot avoid, and you should do your best throughout  
14 the trial to fulfill this responsibility.

15 I play no part in finding the facts. You should not  
16 take anything I may say or do during the trial as indicating  
17 what I think of the evidence or about what your verdict should  
18 be. My role is to make whatever legal decisions have to be  
19 made during the course of the trial and explain to you the  
20 legal principles that must guide you in your decisions.

21 You must apply my instructions about the law. Each of  
22 the instructions is important. You must not substitute your  
23 own notion or opinion about what the law is or ought to be.  
24 You must follow what I give to you whether you agree with it or  
25 not.

1           Perform these duties fairly and impartially. Do not  
2 allow sympathy, prejudice, fear, or public opinion to influence  
3 you. You should also not be influenced by any person's race,  
4 color, religion, national ancestry, gender, or position in life  
5 or in the community.

6           Here are some important rules about your conduct as  
7 jurors:

8           First, keep an open mind. Do not make up your mind  
9 about your verdict until you have heard all of the evidence and  
10 I have given final instructions about the law at the end of the  
11 trial and you have discussed the case with your fellow jurors  
12 during your deliberations.

13           Second, do not discuss the case among yourselves until  
14 the end of the trial when you retire to the jury room to  
15 deliberate. You need to allow each juror the opportunity to  
16 keep an open mind throughout the entire trial. During trial,  
17 you may talk with your fellow jurors about anything else of a  
18 personal nature or of common interest.

19           Third, during the trial, you should not speak to any  
20 of the parties, lawyers, or witnesses involved in this case,  
21 not even to pass the time of day. If any lawyer, party, or  
22 witness does not speak to you if you pass in the hallway, ride  
23 in the elevator, or the like, remember, it's because they're  
24 not supposed to talk or visit with you either.

25           Do not talk with or -- do not talk with anyone else or

1 listen to others talk about this case until the trial has ended  
2 and you have been discharged as jurors. It is important not  
3 only that you do justice in this case, but that you give the  
4 appearance of justice, as well.

5 If anyone should try to talk to you during -- talk to  
6 you about the case during the trial, please report that to me  
7 through my courtroom deputy immediately. Do not discuss the  
8 situation with any other juror.

9 Fifth, do not discuss this case with anyone outside  
10 the courtroom or at home, including your family and friends.  
11 You may certainly tell your family or friends that you have  
12 been selected as a juror in a case, and you may tell them how  
13 long the trial is expected to last.

14 However, you should also tell them that the judge  
15 instructed you not to talk any more about the case and that  
16 they should not talk to you about it. The reason for that is  
17 that sometimes someone else's thoughts can influence you. Your  
18 thinking should be influenced only by what you learn in this  
19 courtroom.

20 Sixth, until the trial is over and your verdict is  
21 announced, do not watch or listen to any television or radio  
22 news programs or reports about the case or read any news or  
23 Internet stories or articles about the case or about anyone  
24 involved with the case.

25 I'll check with you each afternoon. I'll remind you

1 of this instruction. I'll check with you in the morning. And  
2 if at any time, including now, if anyone has read or heard  
3 anything about the case, I'll ask you to please let  
4 Ms. Edleblute know at the next recess.

5 Seventh, do not use a computer, cellphone, other  
6 electronic device, or tools of technology while in the  
7 courtroom or during deliberations. These devices may be used  
8 during breaks or recesses for personal uses but may not be used  
9 to obtain or disclose information about the case.

10 You may not communicate with anyone about the case on  
11 your cellphone, through email, Blackberry, iPhone, text  
12 messaging, or on Twitter, through any blog or website, through  
13 any Internet chat room or by way of any other social networking  
14 websites, including Google Plus, Facebook, MySpace, LinkedIn,  
15 and YouTube. You may not use any similar technology of social  
16 media, even if I have not specifically mentioned it.

17 Eighth, do not do any research or make any  
18 investigation on your own about any matters relating to this  
19 case or this type of case. This means, for example, that you  
20 must not visit the scene, conduct experiments, consult  
21 reference works or dictionaries, or search the Internet,  
22 websites, or blogs for additional information or use a  
23 computer, cellular phone, or other electronic devices or tools  
24 of technology or any other method to obtain information about  
25 this case, this type of case, the parties in this case, or



1 anyone else involved in this case.

2 Please do not try to find out information from any  
3 source outside the confines of this courtroom. You must decide  
4 this case based only on the evidence presented in the courtroom  
5 and my instructions about the law. It would be improper for  
6 you to try to supplement that information on your own.

7 Finally, you should not concern yourselves with or  
8 consider the possible punishment that might be imposed if you  
9 return a verdict of guilty.

10 Now, during the trial, it may be necessary for me to  
11 talk with the lawyers out of your hearing. As you already  
12 know, that is referred to as a bench or sidebar conference. If  
13 that happens, please be patient.

14 We also ask that you advise me through my courtroom  
15 deputy if you are able to hear any of the sidebar conferences  
16 because the purpose, as you already know, is to hold these  
17 discussions outside of your hearing for important reasons.

18 I know you may be curious about what we're discussing.  
19 We are not trying to keep important information from you,  
20 rather these conferences are necessary for me to discuss with  
21 the lawyers objections to evidence and to be sure that evidence  
22 is presented to you correctly under the rules of evidence.

23 We will, of course, do what we can to keep the number  
24 and length of these conferences to a minimum. If I think the  
25 conference will go long, I will take a recess.

1 I may not always grant a lawyer's request for a  
2 sidebar conference. Do not consider my granting or denying a  
3 request for a conference as suggesting my opinion of the case  
4 or what your verdict should be.

5 At the end of the trial, you must make your decision  
6 based on what you remember of the evidence. You will not have  
7 a written transcript of the testimony to review. You must pay  
8 close attention to the testimony as it is given.

9 If you wish, you may take notes to help you remember  
10 what witnesses said. My courtroom deputy has arranged for  
11 pens, pencils, and you have notebooks in the binders that have  
12 been provided for you. If you do take notes, please keep them  
13 to yourself until the end of the trial when you and your fellow  
14 jurors go to the jury room to decide the case.

15 Here are some specific points to keep in mind about  
16 note-taking:

17 Note-taking is permitted, but it is not required. You  
18 are not required to take notes. How many notes you may want to  
19 take, if any, is entirely up to you. Be brief with your notes.  
20 Please make sure the note-taking does not distract you from  
21 your tasks as jurors. You must listen to the testimony of each  
22 witness.

23 You also need to decide whether and how much to  
24 believe each witness. That will require you to watch the  
25 appearance, behavior, and manner of each witness while he or

1 she is testifying. You cannot write down everything that is  
2 said, and there is always a fear that a juror will focus so  
3 much on note-taking that he or she will miss the opportunity to  
4 make important observations.

5 Your notes are memory aids. They are not themselves  
6 evidence. Notes are not a record or written transcript of the  
7 trial. Whether or not you take notes you will need to rely on  
8 your own memory of what was said. Notes are only to assist  
9 your memory. You should not be overly influenced by notes.

10 Do not use your notes or any other juror's notes as  
11 authority to persuade fellow jurors. In your deliberations, do  
12 not give any more or less weight to the views of a fellow juror  
13 just because that juror did or did not take notes.

14 Do not assume that just because something is in  
15 someone's notes, that it necessarily took place in court. It  
16 is just as easy to write something down incorrectly as it is to  
17 hear or remember it incorrectly.

18 Notes are not entitled to any greater weight than each  
19 juror's independent memory of the evidence. You should rely on  
20 your individual and collective memories when you deliberate and  
21 reach your verdict.

22 Do not take your notes away from court. I repeat, at  
23 the end of each day, please leave your notes in each of your  
24 binders in the jury room. Do not take them with you. You will  
25 leave your notes in the jury room during the lunch break and at

1 the conclusion of each day of trial. Ms. Edleblute will  
2 collect your notes and place them in a locked room at the end  
3 of each day. My staff is responsible for making sure that no  
4 one looks at your notes.

5 Immediately after you have finished your deliberations  
6 and I have accepted your verdict, my staff will collect and  
7 destroy your notes to protect the secrecy of your  
8 deliberations.

9 Only the lawyers and I are allowed to ask questions of  
10 witnesses. You are not permitted to ask questions of  
11 witnesses. If, however, you are unable to hear a witness or a  
12 lawyer, please raise your hand immediately and I will correct  
13 the situation.

14 Now, the trial will proceed in the following manner:  
15 First, very shortly from now the lawyers will have an  
16 opportunity to make opening statements to you. The prosecutor  
17 may make an opening statement at the beginning of the case.

18 The defendant's lawyer may make an opening statement  
19 after the prosecutor's opening statement or the defendant may  
20 postpone the making of an opening statement until after the  
21 government finishes presenting its evidence. The defendant is  
22 not required to make an opening statement.

23 The opening statements are simply an outline to help  
24 you understand what each party expects the evidence to show.  
25 What is said in the opening statements is not itself evidence.

1           Second, after opening statements, the government will  
2 introduce the evidence that it thinks proves the charges stated  
3 in the indictment. The government will present witnesses, and  
4 the defendant's lawyer may cross-examine those witnesses. The  
5 government may also offer documents and other exhibits into  
6 evidence.

7           Third, after the government has presented its  
8 evidence, the defendant may present evidence, but he is not  
9 required to do so. As I will tell you many times during this  
10 trial, the government always has the burden or obligation to  
11 prove each and every element of the offenses charged beyond a  
12 reasonable doubt.

13           The defendant is presumed to be innocent of the  
14 charges. The law never imposes on a defendant in a criminal  
15 case the burden of proving his innocence by calling any  
16 witnesses, producing any exhibits, or introducing any evidence.

17           Fourth, after all of the evidence has been presented,  
18 the lawyers will have the opportunity to present closing  
19 arguments. Closing arguments are designed to present to you  
20 the parties' theories about what the evidence has shown and  
21 what conclusions may be drawn from the evidence. What is said  
22 in closing arguments is not evidence, just as what is said in  
23 the opening statements is not evidence.

24           Fifth, after you have heard the closing arguments, I  
25 will give you orally and in writing the final instructions

1 concerning the law that you must apply to the evidence  
2 presented during the trial. As I am doing now, I may also give  
3 you instructions on certain aspects of the law throughout the  
4 trial, as well as at the end of the trial.

5 Sixth, after my final instructions on the law, you  
6 will retire to consider your verdict. Your deliberations are  
7 secret. You will not be required to explain your verdict to  
8 anyone. Your verdict must be unanimous. All twelve of  
9 you must -- all twelve who deliberate must agree to the  
10 verdict.

11 You must keep your minds open during this trial. Do  
12 not make up your mind about any of the questions in this case  
13 until you have heard each piece of evidence and all of the law  
14 that you must apply to the evidence, in other words, until you  
15 begin your deliberations.

16 The trial is expected to last approximately three  
17 weeks. However, this is simply a prediction and not a  
18 guarantee. Each day the court will begin trial at 9:00 a.m.,  
19 and we will take a morning break, a lunch break, and an  
20 afternoon break with the goal of recessing each day at  
21 4:30 p.m. The court may adjust this schedule as needed to  
22 accommodate the court, the parties, and the witnesses.

23 You are permitted to use your cellphones during  
24 breaks, but you may not bring your phones into the courtroom.

25 You must make your decision in this case based only on

1 the evidence that you see and hear in the courtroom. Do not  
2 let rumors, suspicions, or anything else that you may see or  
3 hear outside of court influence your decision in any way.

4 The evidence from which you are to find the facts  
5 consists of the following: The testimony of the witnesses,  
6 documents, and other things received as exhibits, and any fact  
7 or testimony that is stipulated, which simply means formally  
8 agreed to by the parties.

9 The following are not evidence: Statements and  
10 arguments of the lawyers for the parties in the case, questions  
11 by the lawyers and questions that I might ask. You must not  
12 assume that a fact is true just because one of the lawyers or I  
13 ask a question about it. It is the witness's answers that are  
14 the evidence.

15 Of course, you may need to consider the question to  
16 know what a witness means by his or her answer. For example,  
17 if a witness answers "yes" to a question, you will have to  
18 consider the question to understand what the witness is saying.

19 Also not evidence, objections by lawyers, including  
20 objections in which the lawyers state facts, any testimony I  
21 strike or tell you to disregard, and anything you may see or  
22 hear about this case outside the courtroom.

23 You should use your common sense in weighing the  
24 evidence. Consider it in light of your everyday experience  
25 with people and events and give it whatever weight you believe

1 it deserves. If your experience and common sense tells you  
2 that certain evidence reasonably leads to a conclusion, you may  
3 reach that conclusion.

4 The rules of evidence control what can be received  
5 into evidence. When a lawyer asks a question or offers an  
6 exhibit into evidence and a lawyer on the other side thinks  
7 that it is not permitted by the rules of evidence, that lawyer  
8 may object. An objection simply means that the lawyer is  
9 asking me to decide whether the evidence should be allowed  
10 under the rules.

11 Lawyers have a responsibility to their clients to make  
12 objections when they think evidence being offered is improper  
13 under the rules of evidence. You should not be influenced by  
14 the fact that an objection is made.

15 You should also not be influenced by my rulings on  
16 objections to evidence. If I overrule an objection, the  
17 question may be answered or the exhibit may be received as  
18 evidence and you should treat the testimony or exhibit like any  
19 other.

20 I may allow evidence, testimony, or exhibits only for  
21 a limited purpose. If I do that, I will instruct you to  
22 consider the evidence only for that limited purpose, and you  
23 must follow my instruction.

24 Now, if I sustain an objection, the question will not  
25 be answered or the exhibit will not be received as evidence.



1 Whenever I sustain an objection, you must disregard the  
2 question or the exhibit entirely. Do not think about or guess  
3 what the witness might have said in answer to the question. Do  
4 not think about or guess what the exhibit might have shown.

5 Sometimes a witness may have already answered before a  
6 lawyer objects or before I rule on the objection. If that  
7 happens and if I sustain the objection, you should disregard  
8 the answer that was given.

9 Also, I may order that some testimony or other  
10 evidence be stricken or removed from the record. If I do that,  
11 I will instruct you to disregard that evidence. That means  
12 when you are deciding the case, you must not consider or be  
13 influenced in any way by the testimony or other evidence that I  
14 told you to disregard.

15 Although the lawyers may call your attention to  
16 certain facts or factual conclusions that they think are  
17 important, what the lawyers say is not evidence and is not  
18 binding on you. It is your own recollection and interpretation  
19 of the evidence that controls your decision.

20 Also, do not assume from anything I do or say during  
21 the trial that I have any opinion about the evidence or about  
22 any of the issues in the case or about what your verdict should  
23 be.

24 Two types of evidence may be used in this trial:  
25 Direct evidence and circumstantial or indirect evidence. You

1 may use both types of evidence in reaching your verdict.

2 Direct evidence is simply evidence which, if believed,  
3 directly proves a fact. An example of direct evidence occurs  
4 when a witness testifies about something the witness knows from  
5 his or her own senses, something the witness has seen, touched,  
6 heard, or smelled.

7 Circumstantial evidence is evidence which, if  
8 believed, indirectly proves a fact. It is evidence that proves  
9 one or more facts from which you could find or infer the  
10 existence of some other fact or facts.

11 An inference is simply a deduction or conclusion that  
12 reason, experience, and common sense leads you to make from the  
13 evidence. An inference is not a suspicion or a guess. It is a  
14 reasoned, logical decision to find that a disputed fact exists  
15 on the basis of another fact.

16 For example, if someone walked into the courtroom  
17 wearing a wet raincoat and carrying a wet umbrella, that would  
18 be circumstantial or indirect evidence from which you could  
19 find or conclude that it was raining. You would not have to  
20 find that it was raining, but you could.

21 Sometimes different inferences may be drawn from the  
22 same set of facts. The government may ask you to draw one  
23 inference, and the defense may ask you to draw another. You  
24 and you alone must decide what inferences you will draw based  
25 on all the evidence.

1           You should consider all the evidence that is presented  
2 in this trial, direct and circumstantial. The law makes no  
3 distinction between the weight that you should give to either  
4 direct or circumstantial evidence. It is for you to decide how  
5 much weight to give any evidence.

6           In deciding what the facts are, you must decide what  
7 testimony you believe and what testimony you do not believe.  
8 You are the sole judges of the credibility of the witnesses.  
9 Credibility refers to whether a witness is worthy of belief.  
10 Is the witness truthful? Is the witness's testimony accurate?  
11 You may believe everything a witness says or only part of it or  
12 none of it.

13           You may decide whether to believe a witness based on  
14 his or her behavior and manner of testifying, the explanations  
15 the witness gives, and all the other evidence in the case just  
16 as you would in any important matter where you are trying to  
17 decide if a person is truthful, straightforward, and accurate  
18 in his or her recollection. In deciding the question of  
19 credibility, remember to use your common sense, your good  
20 judgment, and your experience.

21           In deciding what to believe, you may consider a number  
22 of factors: The opportunity and ability of the witness to see  
23 or hear or know the things about which the witness testifies;  
24 the quality of the witness's knowledge, understanding, and  
25 memory; the witness's appearance, behavior, and manner while

1     testifying; whether the witness has an interest in the outcome  
2     of the case or any motive, bias, or prejudice; any relation the  
3     witness may have with a party in the case and any effect the  
4     verdict may have on the witness; whether the witness said or  
5     wrote anything before trial that is different from the  
6     witness's testimony in court; whether the witness's testimony  
7     is consistent or inconsistent with other evidence that you  
8     believe; and any other factors that bear on whether the witness  
9     should be believed.

10           Inconsistencies or discrepancies in a witness's  
11     testimony or between the testimony of different witnesses may  
12     or may not cause you to disbelieve a witness's testimony. Two  
13     or more persons witnessing an event may simply see or hear it  
14     differently. Mistaken recollection, like failure to recall, is  
15     a common human experience.

16           In weighing the effect of an inconsistency, you should  
17     consider whether it is about a matter of importance or an  
18     insignificant detail. You should also consider whether the  
19     inconsistency is innocent or intentional.

20           You are not required to accept testimony even if the  
21     testimony is not contradicted and the witness is not impeached.  
22     You may decide that the testimony is not worthy of belief  
23     because of the witness's bearing and demeanor or because of the  
24     inherent improbability of the testimony or for other reasons  
25     that are sufficient to you.

1           After you make your own judgment about the  
2 believability of a witness, you can then attach to the  
3 witness's testimony the importance or weight that you think it  
4 deserves.

5           The weight of the evidence to prove a fact does not  
6 necessarily depend on the number of witnesses who testify.  
7 What is more important than numbers is how believable the  
8 witnesses are and how much weight you think their testimony  
9 deserves.

10           The government has charged the defendant, Christopher  
11 Collare, with violating federal law, specifically wire fraud,  
12 honest services mail fraud, bribery, distribution of heroin,  
13 and making false statements.

14           The charges against Mr. Collare are contained in the  
15 indictment. An indictment is just the formal way of specifying  
16 the exact crimes Mr. Collare is accused of committing. An  
17 indictment is simply a description of the charges against a  
18 defendant. It is an accusation only. An indictment is not  
19 evidence of anything, and you should not give any weight to the  
20 fact that Mr. Collare has been indicted in making your decision  
21 in this case.

22           To help you follow the evidence, I will now give you a  
23 brief summary of the elements of each offense, each of which  
24 the government must prove beyond a reasonable doubt in order to  
25 convict Mr. Collare of the offenses charged.

1           Counts 1 to 16 of the indictment charge Mr. Collare  
2 with wire fraud.

3           In order for you to find Mr. Collare guilty of wire  
4 fraud, you must find that the government proved beyond a  
5 reasonable doubt each of the following three elements:

6           First, that Mr. Collare knowingly devised a scheme to  
7 defraud or to obtain money or property by materially false or  
8 fraudulent pretenses, representations, or promises, or  
9 willfully participated in such a scheme with knowledge of its  
10 fraudulent nature; second, that Mr. Collare acted with the  
11 intent to defraud; and, third, that in advancing, furthering,  
12 or carrying out the scheme, Mr. Collare transmitted any  
13 writing, signal, or sound by means of a wire, radio, or  
14 television communication in interstate commerce or caused the  
15 transmission of any writing, signal, or sound of some kind by  
16 means of a wire, radio, or television communication in  
17 interstate commerce.

18           Counts 19 and 20 of the indictment charge Mr. Collare  
19 with honest services mail fraud.

20           In order for you to find Mr. Collare guilty of honest  
21 services mail fraud, you must find that the government proved  
22 beyond a reasonable doubt each of the following three elements:

23           First, that Mr. Collare knowingly devised a scheme to  
24 defraud or to deprive another of the intangible right of honest  
25 services by materially false or fraudulent pretenses,

1 representations, or promises or willfully participated in such  
2 a scheme with knowledge of its fraudulent nature; second, that  
3 Mr. Collare acted with the intent to defraud; and, third, that  
4 in advancing, furthering, or carrying out the scheme,  
5 Mr. Collare used the mails or a private or commercial  
6 interstate carrier or caused the mails or private or commercial  
7 interstate carrier to be used.

8 Count 21 of the indictment charges Mr. Collare with  
9 solicitation of a bribe.

10 In order for you to find Mr. Collare guilty of this  
11 offense, you must find that the government proved beyond a  
12 reasonable doubt each of the following five elements:

13 First, that at the time alleged in the indictment  
14 Mr. Collare was an agent of the Borough of Carlisle or  
15 Cumberland County, Pennsylvania; second, that the Borough of  
16 Carlisle or Cumberland County, Pennsylvania, received federal  
17 benefits in excess of \$10,000 in a one-year period; third, that  
18 Mr. Collare accepted, agreed to accept, solicited, or demanded  
19 something of value from Person Number 16; fourth, that  
20 Mr. Collare acted corruptly with the intent to be influenced in  
21 connection with the business, a transaction, or a series of  
22 transactions of the Borough of Carlisle or Cumberland County,  
23 Pennsylvania; and, fifth, that the value of the business,  
24 transaction, or series of transactions to which the payment  
25 related was at least \$5,000.

1           Count 22 of the indictment charges Mr. Collare with  
2 demanding, seeking, or receiving a bribe while a public  
3 official.

4           In order for you to find Mr. Collare guilty of this  
5 offense, you must find that the government proved beyond a  
6 reasonable doubt each of the following three elements:

7           First, that Mr. Collare demanded, sought, received, or  
8 agreed to accept something of value; second, that Mr. Collare  
9 was, at that time, a public official of the United States or  
10 was acting on behalf of the United States; and, third, that  
11 Mr. Collare did so corruptly in return for being influenced in  
12 the performance of an official act.

13           Count 23 of the indictment charges Mr. Collare with  
14 distributing a mixture or substance containing a controlled  
15 substance, specifically heroin.

16           In order for you to find Mr. Collare guilty of this  
17 offense, you must find that the government proved beyond a  
18 reasonable doubt each of the following three elements:

19           First, that Mr. Collare distributed a mixture or  
20 substance containing a controlled substance; second, that  
21 Mr. Collare distributed the controlled substance knowingly or  
22 intentionally; and, third that the controlled substance was  
23 heroin.

24           Counts 24 through 29 of the indictment charge  
25 Mr. Collare with making false, fictitious, and fraudulent



1 statements and representations to a department or agency of the  
2 United States.

3 In order for you to find Mr. Collare guilty of this  
4 offense, you must find that the government proved beyond a  
5 reasonable doubt each of the following five elements:

6 First, that Mr. Collare made the statement as charged;  
7 second, that the statement was false; third, that the falsity  
8 concerned a material matter; fourth, that Mr. Collare acted  
9 willfully knowing that the statement was false; and, fifth,  
10 that the false statement was made or used for a matter within  
11 the jurisdiction of a department or agency of the United  
12 States.

13 What I have just told you is only a preliminary  
14 outline of the elements of the offenses charged. At the end of  
15 the trial, I will give you final instructions on the elements  
16 of the offenses charged and on other matters of law, both  
17 orally and in writing. Those final instructions will be more  
18 detailed, and they will guide you in reaching your verdict in  
19 this case.

20 As I stated the elements of the charges, you may have  
21 noticed that I did not mention Counts 17 and 18 of the  
22 indictment. That is because Counts 17 and 18 are no longer  
23 before you in this case. You should not be concerned with, nor  
24 should you speculate about the reason those charges are no  
25 longer part of this trial.

1           Mr. Collare is on trial only for the charges in Counts  
2 1 through 16 and Counts 19 through 29. You may consider the  
3 evidence presented in the case only as it relates to those  
4 charges.

5           Mr. Collare has pleaded not guilty to the offenses  
6 charged. Mr. Collare is presumed to be innocent. He starts  
7 the trial with a clean slate, with no evidence against him.

8           The presumption of innocence stays with Mr. Collare  
9 unless and until the government presents evidence that  
10 overcomes that presumption by convincing you that Mr. Collare  
11 is guilty of the offenses charged beyond a reasonable doubt.  
12 The presumption of innocence requires that you find Mr. Collare  
13 not guilty unless you are satisfied that the government has  
14 proven guilt beyond a reasonable doubt.

15           The presumption of innocence means that Mr. Collare  
16 has no burden or obligation to present evidence at all or to  
17 prove to you that he is not guilty. The burden or obligation  
18 of proof is on the government to prove that Mr. Collare is  
19 guilty, and the burden stays with the government throughout the  
20 trial.

21           In order for you to find Mr. Collare guilty of the  
22 offenses charged, the government must convince you that  
23 Mr. Collare is guilty beyond a reasonable doubt. That means  
24 that the government must prove each and every element of the  
25 offenses charged beyond a reasonable doubt. A defendant may

1 not be convicted based on suspicion or conjecture but only on  
2 evidence proving guilt beyond a reasonable doubt.

3 Proof beyond a reasonable doubt does not mean proof  
4 beyond all possible doubt or to a mathematical certainty.  
5 Possible doubt -- possible doubts or doubt based on conjecture  
6 or speculation are not reasonable doubts. A reasonable doubt  
7 is a fair doubt based on reason, logic, common sense, or  
8 experience.

9 A reasonable doubt means a doubt that would cause an  
10 ordinary person -- an ordinary, reasonable person to hesitate  
11 to act in matters of importance in his or her own life. It may  
12 arise from the evidence or from the lack of evidence or from  
13 the nature of the evidence.

14 If, after hearing all the evidence, you are convinced  
15 that the government has proven Mr. Collare guilty beyond a  
16 reasonable doubt, you should return a verdict of guilty.  
17 However, if you have a reasonable doubt as to an element of an  
18 offense, then you must return a verdict of not guilty.

19 Mr. Collare is charged with more than one offense, and  
20 each offense is charged in a separate count of the indictment.  
21 The number of offenses charged is not evidence of guilt, and  
22 this should not influence your decision in any way.

23 You must separately consider the evidence that relates  
24 to each offense, and you must return a separate verdict for  
25 each offense at the end of the trial. For each offense

1 charged, you must decide whether the government has proven  
2 beyond a reasonable doubt that the defendant is guilty of that  
3 particular offense.

4 Your decision on one offense, whether guilty or not  
5 guilty, will not influence your decision on any of the other  
6 offenses charged. Each offense should be considered  
7 separately.

8 All right. Ladies and gentlemen, that concludes my  
9 preliminary instructions. I will now turn to counsel for the  
10 United States and ask, do you wish to give an opening  
11 statement?

12 MR. MARCHIOLI: Yes, Your Honor.

13 THE COURT: All right. Please proceed.

14 MR. MARCHIOLI: Thank you.

15 *(Whereupon, Mr. Marchioli gave an opening statement on*  
16 *behalf of the government, and Mr. Abom gave an opening*  
17 *statement on behalf of the defendant.)*

18 THE COURT: Thank you, Mr. Abom. All right. Jurors,  
19 we are approaching 4:30, and as promised, I will let you go  
20 today by 4:30.

21 The plan for tomorrow is we will resume trial at  
22 9:00 a.m. I would ask that you all plan to be here by 8:45,  
23 and you'll proceed to jury deliberation room -- the jury  
24 deliberation room. Ms. Edleblute will check in with you and  
25 make sure you're all here and ready to proceed, and then I will

1 plan to bring you in at 9:00 a.m.

2 Because we're about to break for the day, I do want to  
3 remind you of the instructions I gave you earlier about your  
4 conduct as jurors.

5 During this recess and all other recesses, do not  
6 discuss the case with anyone and do not permit anyone to  
7 discuss the case with you.

8 In addition, as I indicated a few moments ago, you  
9 will be asked to decide this case based solely on the evidence  
10 presented in this courtroom. This means that after you leave  
11 here for the night, you must not watch or listen to any news  
12 reports concerning this trial on television or on radio or read  
13 any news accounts of the trial in a newspaper or on the  
14 Internet.

15 Further, you must not conduct any independent research  
16 about this case, the matters in this case, the legal issues in  
17 the case, or the individuals involved in this case.

18 All right. At this point, ladies and gentlemen, we  
19 will recess for the day, and we will look forward to seeing you  
20 at 9:00 a.m. tomorrow morning. Court stands in recess.

21 *COURTROOM DEPUTY:* Please rise.

22 *(Jury leaves courtroom.)*

23 *THE COURT:* Are there any matters either counsel would  
24 like to place on the record before we break for the day?

25 *MR. MARCHIOLI:* Not for the government, Your Honor.

1           MR. ABOM: No, Your Honor.

2           THE COURT: We'll go off the record then.

3           *(Discussion held off the record.)*

4           *(Whereupon, the proceedings were adjourned at 4:23 p.m.)*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 5th day of April, 2022.

**/s/ Lori A. Shuey**

Lori A. Shuey  
Federal Certified Realtime Reporter